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In The OFFICE OF THE CLERK  
**Supreme Court of the United States**

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THE ROMAN CATHOLIC  
ARCHBISHOP OF LOS ANGELES,

*Petitioner,*

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

*Respondent,*

THE PEOPLE OF THE STATE OF CALIFORNIA,

*Real Party in Interest.*

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**On Petition For Writ Of Certiorari  
To The Court Of Appeal Of The State Of California,  
Second Appellate District, Division Three**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether State-compelled disclosure and government review of confidential, pastoral counseling by members of the clergy inescapably entangles the State in the internal religious life of churches in violation of the Establishment Clause and destroys pastoral counseling of churches in violation of the Free Exercise Clause.
2. Whether subpoenas directed at confidential, pastoral counseling by members of the clergy of the Roman Catholic religion are inherently *not* "neutral laws of general applicability" within the meaning of *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), thus triggering the strict scrutiny test under the Free Exercise Clause of the First Amendment.
3. Assuming that subpoenas targeted at the practices of the Roman Catholic religion are *not* neutral laws of general applicability within the meaning of *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), whether the State must make a case-specific factual showing to meet the strict scrutiny test or whether the State's general interest in investigating crime is sufficient.
4. Whether the holding of *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), should be reconsidered.

**RULE 29.6 STATEMENT**

Pursuant to Supreme Court Rule 29.6, petitioner states that it has no parent companies or non-wholly-owned subsidiaries.

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**PETITION FOR A WRIT OF CERTIORARI**  
**OPINIONS BELOW**

The opinion of the Court of Appeal of the State of California is *Roman Catholic Archbishop of Los Angeles v. Superior Court*, 131 Cal. App. 4th 417 (2005), *review denied*, 2005 Cal. LEXIS 13083 (Nov. 16, 2005). Appendix ("App.") at 1-64.

The underlying opinion of the Los Angeles County Superior Court is filed under seal. Sealed Appendix ("SA") Ex. 3 at 64-122.<sup>1</sup> A prior opinion of the Ventura County Superior Court is also filed under seal. SA Ex. 1 at 1-8. Unlike the Los Angeles Superior Court, the Ventura Court recognized that the Vicar for Clergy's counseling files are protected by the First Amendment. *See, e.g.*, SA Ex. 1 at 2-6.

The order of the Supreme Court of California denying discretionary review is attached. App. at 170.

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**JURISDICTION**

The Superior Court's order was filed on September 7, 2004. Petitioner filed a petition for writ of mandate on January 21, 2005. The Court of Appeal's opinion was filed on July 25, 2005. The Supreme Court of California's order was filed on November 16, 2005.

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<sup>1</sup> The opinion is filed under seal because it includes an appendix that the Superior Court ordered not to be released to the public. SA Ex. 3 at 97:1-5, 98-121. The opinion and four additional sealed documents are incorporated in petitioner's Sealed Appendix.

The jurisdiction of this Court is invoked under 28 U.S.C.S. § 1257(a) (2005) (state-court judgments may be reviewed by writ of certiorari where any “right, privilege, or immunity is . . . claimed under the Constitution . . .”).

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## CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment provides in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .” U.S. Const. amend. I.

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## STATEMENT OF THE CASE

This case raises important questions relating to the scope and application of the Religion Clauses of the First Amendment in situations where the government uses grand jury subpoenas to discover the content of confidential, pastoral and episcopal counseling by a bishop or his proxy with a priest.

The records at issue represent highly-personal disclosures by vulnerable persons seeking and being guided to change their lives. The Church is involved in every way possible to assist these persons (who happen to be priests) to live a Christian life. More specifically, the documents are from the counseling files of the Vicar for Clergy, the bishop’s proxy. SA Ex. 2 at 25:2-18 (citing Cox Decl. ¶ 10), 29:19-30:18 (citing Cox Decl. ¶¶ 27-28); SA Ex. 3 at 77:25-78:12, 79:13-80:3; App. at 7 (131 Cal. App. 4th at 427). The Vicar keeps a separate file for each priest under his care. SA Ex. 2 at 29:25-28; SA Ex. 3 at 79:19-24; App. at 8 (131 Cal. App. 4th at 428). The Vicar’s religious ministry